SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 59

DONALD LOFTUS, PETITIONER,

vs.

PEOPLE OF THE STATE OF ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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[fol. 4]

IN THE CIRCUIT COURT OF MC HENRY COUNTY

PEOPLE OF THE STATE OF ILLINOIS

VS.

DONALD LOFTUS, Alias David Loftus, Alias Dave Loftus, Alias Dan Foreman, Alias Richard Hollister, Alias George Willis, Alias Harold Gallagher

INDICTMENT FOR ROBBERY WITH A GUN—Filed April 9, 1932

1. The Grand Jurors chosen, selected and sworn, in and for the County of McHenry, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present: That Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, late of the County of McHenry and State of Illinois, on to-wit: the 26th day of November, in the year of our Lord, one thousand nine hundred and thirty, at and within the said County of McHenry, in the State of Illinois aforesaid, in and upon one Harold Fiertag, feloniously did make an assault, the said Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, being then and there armed with deadly weapons, to-wit: pistols, being then and there loaded with gun powder and leaden bullets, and the said Harold Fiertag, in bodily fear and danger of his life, then and there feloniously did put, and divers United States treasury notes, National Bank bills, gold certificates and silver certificates, the exact denominations [fol. 5] of which to the Grand Jurors are unknown, all legal tender of the United States and good and lawful money thereof, of the value of to-wit: Twelve thousand, one hundred fifty ($12,150) dollars, of the goods and chattels of the First National Bank of Marengo, Illinois, a Banking Corporation, organized under and operating by virtue of the Federal Laws of the United States, then and there being in his care, custody and control and against the will of the said Harold Fiertag, then and there feloniously did rob,

steal, take and carry away, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Illinois.

2. And the Grand Jurors chosen, selected and sworn, in and for the County of McHenry aforesaid, in the name and by the authority of the People of the State of Illinois aforesaid, upon their oaths aforesaid, do further present: That the said Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, late of the County and State aforesaid, on to-wit: the 26th day of November, in the year of our Lord, one thousand nine hundred and thirty, at and within the said County of McHenry, in the State of Illinois aforesaid, in and upon one Harold Fiertag, feloniously did make an assault, the said Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, being then and there armed with deadly weapon, to-wit: pistols, being then and there loaded with gun powder and leaden bullets, and the said Harold Fiertag, in bodily fear and danger of his life, then and there feloniously did put, and divers sums of money, divers United States treasury notes and National Bank bills, all good and lawful money of the United States and legal tender, of the value of to-wit: Twelve thousand, one hundred fifty ($12,150) dollars, of the goods and chattels of the First National Bank [fol. 6] of Marengo, a Banking Corporation organized under and operating by virtue of the Federal Laws of the United States, and being then and there in the custody and under the control of the said Harold Fiertag, an employee of the said First National Bank of Marengo, a Banking Corporation, from the person and from the custody and control and against the will of the said Harold Fiertag, feloniously and violently, did rob, steal, take and carry away, contrary to the form of the statute in such case made and provided and against the peace and dignity of the same People of the State of Illinois.

3. And the Grand Jurors chosen, selected and sworn in and for the County of McHenry aforesaid, in the name and by the authority of the People of the State of Illinois aforesaid, upon their oaths aforesaid, do further present: That Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis

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Alias Harold Gallagher, late of the County of McHenry and State of Illinois, on to-wit: the 26th day of November, in the year of our Lord, one thousand nine hundred and thirty, at and within the said County of McHenry, in the State of Illinois aforesaid, in and upon one Laura Renwick, feloniously did make an assault, the said Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, being then and there armed with deadly weapons, to-wit: pistols, being then and there loaded with gun powder and leaden bullets, and the said Laura Renwick, in bodily fear and danger of her life, then and there feloniously did put, and divers United States treasury notes, National Bank bills, gold certificates and silver certificates, the exact denominations of which to the Grand Jurors are unknown, all legal tender of the United States and good and lawful money thereof, of the value of to-wit: Twelve thousand, one hundred fifty ($12,150) dollars, of the goods and chattels of the First National Bank of [fol. 7] Marengo, Illinois, a Banking Corporation, organized under and operating by virtue of the Federal laws of the United States, then and there being in her care, custody and control and against the will of the said Laura Renwick, then and there feloniously did rob, steal, take and carry away, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Illinois.

4. And the Grand Jurors chosen, selected and sworn, in and for the County of McHenry aforesaid, in the name and by the authority of the People of the State of Illinois aforesaid, upon their oaths aforesaid, do further present: That the said Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, late of the County and State aforesaid, on to-wit: the 26th day of November, in the year of our Lord, one thousand nine hundred and thirty, at and within the said County of McHenry, in the State of Illinois aforesaid, in and upon one Laura Renwick, feloniously did make an assault, the said Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, being then and there armed with deadly weapons, to-wit: pistols, being then and there loaded with gun powder and leaden

bullets, and the said Laura Renwick, in bodily fear and danger of her life, then and there feloniously did put, and divers sums of money, divers United States treasury notes and National Bank bills, all good and lawful money of the United States and legal tender of the value of to-wit: Twelve Thousand, one hundred fifty ($12,150) Dollars, of the goods and chattels of the First National Bank of Marengo, a Banking Corporation organized under and operating by virtue of the Federal Laws of the United States, and being then and there in the custody and under the control of the [fols. 8-10] said Laura Renwick, an employee of the said First National Bank of Marengo, a banking Corporation, from the person and from the custody and control and against the will of the said Laura Renwick, feloniously and violently did rob, steal, take and carry away, contrary to the form of the statute in such case made and provided and against the peace and dignity of the same People of the State of Illinois.

Vincent S. Lumley, State's Attorney in and for McHenry County, Illinois.

Upon the back of the same appear the following endorsements:

Gen. No. 25503. Term No. —. McHenry County Circuit Court, Jan. Term, A. D. 1932. The People vs. Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher. Indictment for Robbery with a Gun. A True Bill. Frank C. Ferris, Foreman of the Grand Jury. Witnesses: Harold Fiertag, Laura Renwick, Lester Edinger, Harold Reese, Richard Patrick. Vincent S. Lumley, States Attorney. 33/436. Capias Ordered and Bail Fixed at $25000. Edward D. Shurtleff, Judge.

[fols. 11-12] In Circuit Court of McHenry County

Minute Entries—April 9, 1932

It appearing to the Court that the Grand Jury has returned an Indictment against the defendant herein it is ordered that a Capias Forthwith issue herein against the said defendant and that the said defendant's bail on said Capias be and it is hereby fixed at the sum of Twenty-five Thousand ($25,000.00) Dollars.

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Now on this day come The People of the State of Illinois by Vincent S. Lumley, State's Attorney and the defendant, Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher in his own proper person also comes and the said defendant having been furnished with a copy of the Indictment and with lists of the witnesses and Grand and Petit Jurors for this Term of Court, it is therefore ordered that said defendant be arraigned for plea.

Whereupon comes the said defendant and states to the Court that he has no counsel and that his money is tied up and asks the Court for a week's continuance in order to get the proper counsel, Attorney W. W. Ryan, he at present being busy in Chicago.

Whereupon it is ordered by the Court that David R. Joslyn, Jr., be and he is hereby appointed temporary counsel to make motions in behalf of said defendant. And after conferring with David R. Joslyn, Jr., his counsel, again comes the said defendant and enters a temporary plea of not guilty of Robbery with a Gun in manner and form as charged in said indictment, until he has time to confer with his attorney, W. W. Ryan.

It is therefore ordered by the Court that said plea of not guilty be and same is hereby entered of record.

It is further ordered by the Court that this case be and the same is hereby continued until Monday April 18th, 1932 and this case to be first case tried.

[fol. 13] MINUTE ENTRIES—April 18, 1932

Now on this day come The People of the State of Illinois by Vincent S. Lumley, State's Attorney. Also on this day comes David H. Feldman and enters his appearance in this cause as counsel for the defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher.

Again on this day come the said People of the State of Illinois by Vincent S. Lumley, State's Attorney and the defendant in his own proper person as well as by David H. Feldman, his counsel, also comes.

Whereupon comes David H. Feldman, counsel for said defendant, and moves the Court for a continuance which motion is denied by the Court.

Whereupon comes David H. Feldman, counsel for said defendant and moves the Court to quash the Indictment in this case and after arguments of counsel and due deliberation by the Court, said motion is denied.

And this case now being called for trial; it is ordered that a Jury be called.

It is further ordered by the Court that Maurice T. Johnson be and he is hereby appointed to assist David H. Feldman, defendant's counsel, in selecting the jury and trying the case.

It appearing to the Court that the January Term panel of Petit Jurors has been exhausted it is ordered by the Court that the Sheriff draw from the body of the county a sufficient number of men to fill the jury box. Whereupon the Sheriff summoned the following named persons to serve as Petit Jurors: P. Ben Anderson, John Shannon, Earl Brown, Gust Larson, Al Klemme, Claude Westerman, Elmer [fol. 14] Miner and Lee Jacobs.

It is ordered by the Court that Juryman Emil Kellerman be dismissed and be deprived of Jury fees until the further order of Court on the grounds that he tried to evade serving as a Juryman.

And the defendant having had 17 Peremptory Challenges and 3 excused for Cause;

Whereupon come the following jurors, to-wit: Simon Michels, A. L. Bennett, Frank Henry, Harry Holmes, Carl Kublank, Richard Anderson, Oscar Strom, Clarence Niessen, Al Klemme, Elmer Miner, Lee Jacobs and Gust Larson, twelve good and lawful men who were duly sworn and empanneled according to law to try the issues herein.

Whereupon examination of witnesses by counsel is commenced and now at the close of Plaintiff's case comes the defendant by his counsel and enters his motion for time to get witnesses. Whereupon the Court allows defendant's counsel ten minutes to confer with defendant as to witnesses.

And now the Court and jury having heard all the proofs herein submitted, the testimony of witnesses produced and sworn in open Court and arguments of counsel being waived, by agreement of counsel this case is to be submitted to the Jury without arguments. And now the Jury having heard

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the instructions of the court, retire in charge of a sworn bailiff to consider of their Verdict.

And afterwards on this day come the Jury and return into open Court with their Verdict, which Verdict is in the words and figures following, to-wit:

VERDICT NUMBER ONE

We, the jury, find the defendant David Loftus guilty of robbery in manner and form as charged in the indictment, and we further find that at the time of the commission of the robbery, the said defendant David Loftus was then [fols. 15-16] armed with a dangerous weapon, to-wit: a pistol, and we further find from the evidence that the defendant David Loftus is about the age of 34 years.

A. L. Bennett, Foreman; Elmer C. Miner, Oscar Strom, Alfred H. Klemme, Lee W. Jacobs, Clarence Niesen, Gus Larson, Harry Holmes, Frank Henry, R. B. Anderson, Carl G. Kublank, Simon Michels.

Whereupon comes the defendant by David H. Feldman, his counsel, and enters his motion for a new trial.

[fol. 17] MINUTE ENTRIES—April 22, 1932

Now on this day this cause coming on for hearing on defendant's motion for a new trial heretofore entered herein, come The People of the State of Illinois by Vincent S. Lumley, State's Attorney and the defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher in his own proper person as well as by David H. Feldman, his counsel, also comes. And now the Court having heard and duly considered the arguments of counsel and being fully advised in the premises, overrules said motion.

Thereupon comes the defendant by David H. Feldman his counsel and enters his motion in arrest of judgment and the Court having heard and duly considered the arguments of counsel and being fully advised in the premises, overrules said motion.

It is further ordered by the Court that leave be and is hereby given to file a bill of exceptions herein.

It is therefore ordered by the Court that judgment enter herein on the verdict of the jury finding the defendant guilty as charged in the indictment.

JUDGMENT

This day come the said People by Vincent S. Lumley, State's Attorney and the Defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher as well in his own proper person as by David H. Feldman, his counsel, also comes, and now neither the said Defendant nor his counsel for him saying anything further why the judgment of the Court should not now be pronounced against him on the Verdict of guilty, heretofore rendered to the indictment in this cause.

Therefore, it is ordered and adjudged by the Court that the said Defendant Donald Loftus alias David Loftus alias [fols. 18-22] Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher who is found to be 34 years of age, and is convicted of the crime of Robbery With a Gun herein, be sentenced to the Penitentiary of this State, at Joliet, Illinois, and it is further ordered and adjudged that the said Defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher be taken from the bar of this Court to the Common Jail of McHenry County and from thence by the Sheriff of McHenry County within ten days to the Penitentiary of this State, at Joliet, and be delivered to the Warden or Keeper of said Penitentiary; and the said Warden or Keeper is hereby required and commanded to take the body of the said Defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher and confine him in said Penitentiary, in safe and secure custody, from and after the delivery thereof until discharged by due course of law, to-wit: from one year to life, the term of such imprisonment and commitment may be terminated earlier than the maximum by the Department of Public Welfare, by and with the approval of the Governor in the nature of a release or commutation of sentence or commitment.

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It is further ordered that the said Defendant pay all the costs of these proceedings, and that execution issue therefor.

It is further ordered by the Court that Sixty Days be allowed in which to file Bill of Exceptions.

[fol. 23] IN THE CIRCUIT COURT OF MC HENRY COUNTY

PEOPLE OF THE STATE OF ILLINOIS,

vs.

DONALD LOFTUS, Alias David Loftus, Alias Dave Loftus, Alias Dan Foreman, Alias Richard Hollister, Alias George Willis, Alias Harold Gallagher

INDICTMENT FOR ROBBERY WITH A GUN—Filed April 9, 1932

1. The Grand Jurors chosen, selected and sworn, in and for the County of McHenry in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present: That Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, late of the County of McHenry and State of Illinois, on to-wit: the 19th day of September, in the year of our Lord, one thousand nine hundred and thirty, at and within the said County of McHenry, in the State of Illinois aforesaid, in and upon one George Keyes feloniously did make an assault, the said Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, being then and there armed with deadly weapons, to-wit: pistols, then and there being loaded with gun powder and leaden bullets, and the said George Keyes in bodily fear and danger of his life, then and there feloniously did put, and divers United States treasury notes, National Bank bills, [fol. 24] gold certificates and silver certificates, the exact denominations of which are to the Grand Jurors unknown, all legal tender of the United States and good and lawful money thereof, of the value of to-wit: Twenty-eight hundred sixty-nine ($2869) dollars, of the goods and chattels of the Algonquin State Bank, an Illinois Banking Corporation, then and there being in his care, custody and control, and against the will of the said George Keyes, then and there

feloniously and violently did rob, steal, take and carry away, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Illinois.

2. And the Grand Jurors chosen, selected and sworn in and for the County of McHenry aforesaid, in the name and by the authority of the People of the State of Illinois aforesaid, upon their oaths aforesaid, do further present: That the said Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, on to-wit: the 19th day of September, in the year of our Lord, one thousand nine hundred and thirty, at and within the said County of McHenry, in the State of Illinois aforesaid, in and upon one George Keyes, feloniously did make an assault, the said Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, being then and there armed with deadly weapons, to-wit: pistols, being then and there loaded with gun powder and leaden bullets, and the said George Keyes in bodily fear and danger of his life, then and there feloniously did put, and divers sums of money, divers United States treasury notes and National Bank bills, all good and lawful money of the United States and legal tender, of the value of to-wit: Twenty-eight hundred sixty-nine ($2869) dollars, of the goods and chattels of the Algon- [fol. 25] quin State Bank of Algonquin, Illinois, a banking corporation organized under and operating by virtue of the laws of the State of Illinois, and being then and there in the custody and under the control of said George Keyes, the cashier of said Algonquin State Bank, a Banking Corporation, from the person and from the custody and control and against the will of the said George Keyes, feloniously and violently did rob, steal, take and carry away, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

3. And the Grand Jurors chosen, selected and sworn in and for the County of McHenry aforesaid, in the name and by the authority of the People of the State of Illinois aforesaid, upon their oaths aforesaid, do further present: That Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis

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Alias Harold Gallagher, late of the County of McHenry and State of Illinois, on to-wit: the 19th day of September, in the year of our Lord, one thousand nine hundred and thirty, at and within the said County of McHenry, in the State of Illinois aforesaid, in and upon one Wilbur Brewer feloniously did make an assault, said Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, being then and there armed with deadly weapons, to-wit: pistols, being then and there loaded with gun powder and leaden bullets, and the said Wilbur Brewer, in bodily fear and danger of his life, then and there feloniously did put, and divers United States treasury notes, National Bank bills, gold certificates and silver certificates, the exact denominations of which are to the Grand Jurors unknown, all legal tender of the United States and good and lawful money thereof, of the value of to-wit: Twenty-eight hundred [fol. 26] sixty-nine ($2869) dollars, of the goods and chattels of the Algonquin State Bank, an Illinois Banking Corporation, located at Algonquin, Illinois, then and there being in his care, custody and control and against the will of the said Wilbur Brewer, then and there feloniously did rob, steal, take and carry away, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Illinois.

4. And the Grand Jurors chosen, selected and sworn, in and for the County of McHenry aforesaid, in the name and by the authority of the People of the State of Illinois aforesaid, upon their oaths aforesaid, do further present: That the said Donald Loftus Alias David Loftus Alias Dave LoftusAlias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, late of the County and State aforesaid, on to-wit: the 19th day of September, in the year of our Lord, one thousand nine hundred and thirty, at and within the said County of McHenry in the State of Illinois aforesaid, in and upon one Wilbur Brewer, feloniously did make an assault, the said Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, being then and there armed with deadly weapons, to-wit: pistols, being then and there loaded with gun powder and leaden bullets, and the said Wilbur Brewer, in bodily fear and danger of his life, then and there feloniously did

put, and divers sums of money, divers United States treasury notes, divers National Bank bills, all good and lawful money of the United States and legal tender, of the value of to-wit: Twenty-eight hundred sixty-nine ($2869) dollars, of the goods and chattels of the Algonquin State Bank, organized under and operating by virtue of the laws of the [fols. 27-29] State of Illinois, and being then and there in the custody and under the control of the said Wilbur Brewer, the assistant cashier, an employee of the said Algonquin State Bank, a banking corporation, from the person and from the custody and control, and against the will of the said Wilbur Brewer, feloniously did rob, steal, take and carry away, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Illinois.

Vincent S. Lumley, State's Attorney in and for McHenry County, Illinois.

Upon the back of the same appear the following endorsements: Gen. No. 25505. Term No. —. McHenry County Circuit Court, Jan. Term A.D. 1932. The People vs. Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister, Alias George Willis Alias Harold Gallagher. Indictment for Robbery with a Gun. A True Bill. Frank C. Ferris, Foreman of the Grand Jury. Witnesses: George Keyes, Wilbur Brewer, Lester Edinger, Harold Reese, Gertrude Camm. Vincent S. Lumley, States Attorney. 33/438. Capias ordered and bail fixed at $25,000. Edward D. Shurtleff, Judge.

[fols. 30-31] Minute Entries—April 9, 1932

It appearing to the Court that the Grand Jury has returned an Indictment against the defendant herein it is ordered that a Capias Forthwith issue herein against the said defendant and that the said defendant's bail on said Capias be and it is hereby fixed at the sum of Twenty-five thousand ($25,000.00) Dollars.

Now on this day come The People of the State of Illinois by Vincent S. Lumley, State's Attorney and the defendant, Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher in his own proper person also comes

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and the said defendant having been furnished with a copy of the Indictment and with lists of the witnesses and Grand and Petit Jurors for this Term of Court, it is therefore ordered that said defendant be arraigned for plea.

Whereupon comes the said defendant and states to the Court that he has no counsel and that his money is tied up and asks the Court for a week's continuance in order to get the proper counsel, Attorney W. W. Ryan, he at present being busy in Chicago.

Whereupon it is ordered by the Court that David R. Joslyn, Jr. be and he is hereby appointed temporary counsel to make motions on behalf of said defendant. And after conferring with David R. Joslyn, Jr., his counsel, again comes the said defendant and enters a temporary plea of not guilty of Robbery with a Gun in manner and form as charged in said indictment, until he has time to confer with his attorney, W. W. Ryan.

It is therefore ordered by the Court that said plea of not guilty be and same is hereby entered of record.

It is further ordered by the Court that this case be and the same is hereby continued until Monday April 18th, 1932.

[fols. 32-33] Minute Entries—April 18, 1932

Now on this day come The People of the State of Illinois by Vincent S. Lumley, State's Attorney. Also on this day comes David H. Feldman and enters his appearance in this cause as counsel for the defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher.

Again on this day come the said People of the State of Illinois by Vincent S. Lumley, State's Attorney and the defendant in his own proper person as well as by David H. Feldman, his counsel, also comes, with Attorney Maurice T. Johnson assisting.

And this case now being called for trial; it is ordered that a Jury be called. And the Jury Box being filled and said jurors being sworn to answer questions, it is ordered by the Court that said jurors be excused until ten o'clock A.M. Tuesday April 19th, 1932.

[fol. 34] MINUTE ENTRIES—April 19, 1932

Now on this day this cause coming on for further hearing come The People of the State of Illinois by Vincent S. Lumley, State's Attorney and the defendant Donald Loftus, alias David Loftus, alias Dave Loftus, alias Dan Foreman, alias Richard Hollister, alias George Willis, alias Harold Gallagher appearing in Court in person and David H. Feldman, his counsel, not being present and not appearing. (A Telegram from said David H. Feldman to Vincent S. Lumley, State's Attorney being filed in this cause and is in words and figures as follows, to-wit:

Western Union

Received at 2-7 Chicago, Ills., 948 AM 19 Woodstock, Ill. States Atty. Lumley Court House, Woodstock, Ills.

Cannot appear in court today for Loftus.

-David H. Feldman.)

It is therefore ordered by the Court that Maurice T. Johnson be and he is hereby appointed by the Court to defend the defendant.

And the said Defendant having had 7 Peremptory Challenges and 8 excused for Cause;

Whereupon come the following jurors, to-wit: Peter Wirfs, P. Ben Anderson, Clyde Hayford, Rupert D. Collier, Mack Peterson, Tom McQuire, Earl Young, Harry Turner, Wm. R. Bickler, Ray L. Wilson, Henry Lingenfelter and Clarence L. Judson, twelve good and lawful men who were duly sworn and empanneled according to law to try the issues herein.

Whereupon examination of witnesses by counsel is commenced.

And now the Court and Jury having heard all the proofs herein submitted, the testimony of witnesses produced and [fol. 35] sworn in open Court and the arguments of Vincent S. Lumley, State's Attorney, the case being submitted without further arguments, and the jury having heard the instructions of the Court, retire in charge of a sworn officer to consider of their Verdict.

And afterwards on this day come the Jury and return into open Court with their Verdict, which Verdict is in the words and figures following, to-wit:

BLEED THROUGH – POOR COPY

VERDICT NUMBER ONE

We, the jury, find the defendant Donald Loftus guilty of robbery in manner and form as charged in the indictment, and we further find that at the time of the commission of the robbery, the said defendant Donald Loftus was then armed with a dangerous weapon, to-wit: a pistol, and we further find from the evidence that the defendant Donald Loftus is about the age of 34 years.

P. Ben Anderson, Foreman; Harry Turner, Peter Wirfs, Henry Lingenfelter, Ray L. Wilson, Mack Peterson, Earl Young, Rupert D. Collier, Clarence L. Judson, Tom McGuire, Wm. R. Bickler, Clyde Hayford.

[fols. 36-37] It is ordered by the Court that leave be and same is hereby given Plaintiffs to withdraw People's Exhibit 1 and same to be given to Lester Edinger, Sheriff.

Whereupon comes the defendant herein and enters his motion for a new trial.

It is further ordered by the Court that defendant's motion for a new trial be and it is hereby set for hearing on Friday, April 22nd, 1932.

[fol. 38] MINUTE ENTRIES—April 22, 1932

Now on this day this cause coming on for hearing on defendant's motion for new trial heretofore entered herein, come The People of the State of Illinois by Vincent S. Lumley, State's Attorney and the defendant Donald Loftus, alias David Loftus, alias Dave Loftus, alias Dan Foreman, alias Richard Hollister, alias George Willis, alias Harold Gallagher in his own proper person as well as by David H. Feldman, his counsel, also comes. And now the Court having heard and duly considered the arguments of counsel, and being fully advised in the premises, overrules said motion.

Whereupon comes the defendant by David H. Feldman his counsel and enters his motion in arrest of judgment and the Court having heard and duly considered the arguments of counsel and being fully advised in the premises, overrules said motion.

It is further ordered by the Court that leave be and is hereby given to file a bill of exceptions herein.

It is therefore ordered by the Court that judgment enter herein on the verdict of the jury finding the defendant guilty as charged in the indictment.

JUDGMENT

This day come the said People by Vincent S. Lumley, State's Attorney and the defendant Donald Loftus, alias David Loftus, alias Dave Loftus, alias Dan Foreman, alias Richard Hollister, alias George Willis, alias Harold Gallagher as well in his own proper person as by David H. Feldman, his counsel, also comes, and now neither the said Defendant nor his counsel for him saying anything further why the judgment of the Court should not now be pronounced against him on the Verdict of Guilty, heretofore rendered to the Indictment in this cause.

[fols. 39-43] Therefore, it is ordered and adjudged by the Court that the said Defendant Donald Loftus, alias David Loftus, alias Dave Loftus, alias Dan Foreman, alias Richard Hollister, alias George Willis, alias Harold Gallagher who is found to be 34 years of age, and is convicted of the crime of Robbery With A Gun herein, be sentenced to the penitentiary of this State, at Joliet, Illinois, and it is further ordered and adjudged that the said Defendant Donald Loftus, alias David Loftus, alias Dave Loftus, alias Dan Foreman, alias Richard Hollister, alias George Willis, alias Harold Gallagher be taken from the bar of this Court to the Common Jail of McHenry County and from thence by the Sheriff of McHenry County within ten days to the Penitentiary of this State, at Joliet, and be delivered to the Warden or Keeper of said Penitentiary; and the said Warden or Keeper is hereby required and commanded to take the body of the said Defendant Donald Loftus, alias David Loftus, alias Dave Loftus, alias Dan Foreman, alias Richard Hollister, alias George Willis, alias Harold Gallagher and confine him in said Penitentiary in safe and secure custody, from and after the delivery thereof until discharged by due course of law, to-wit: from one year to life, the term of such imprisonment and commitment may be terminated earlier than the maximum by the Department of Public Welfare, by and with the approval of the Governor in the nature of a release or commutation of sentence or commitment.

BLEED THROUGH – POOR COPY

It is further ordered that the said Defendant pay all the costs of these proceedings, and that execution issue therefor.

It is further ordered by the Court that the sentence in this case is to run consecutively with the sentence of Case No. 25,503 that is, that the sentence in this case No. 25505 commence to run at the expiration of the sentence in 25,503.

It is further ordered by the Court that Sixty days be allowed in which to file Bill of Exceptions.

[fol. 44] In the Circuit Court of McHenry County

Indictment for Burglary—Filed April 9, 1932

People of the State of Illinois

vs.

Donald Loftus, Alias David Loftus, Alias Dave Loftus, Alias Dan Foreman, Alias Richard Hollister, Alias George Willis, Alias Harold Gallagher

1. The Grand Jurors chosen, selected and sworn, in and for the County of McHenry, in the name and by the authority of the People of the State of Illinois, upon their oaths present: That Donald Loftus, Alias David Loftus, Alias Dave Loftus, Alias Dan Foreman, Alias Richard Hollister, Alias George Willis, Alias Harold Gallagher, late of the County of McHenry and State of Illinois, on to-wit: the 19th day of September, in the year of our Lord, one thousand nine hundred and thirty, in the village of Algonquin, in the county aforesaid, a certain brick building then and there being situate and being used as a banking house, then and there being the property of the Algonquin State Bank, a Banking Corporation organized under and operating by virtue of the laws of the State of Illinois, then and there wilfully and forcibly did break and enter therein, with the intent to commit a felony therein, to-wit: larceny, and did then and there feloniously steal, take and carry away divers United States treasury notes, National Bank bills, gold certificates and silver certificates, the exact [fol. 45] denominations of which are to the Grand Jurors unknown, all good and legal tender of the United States,

and good and lawful money thereof, of the value of to-wit: Twenty-eight hundred sixty-nine ($2869) dollars, of the goods and chattels of the said Algonquin State Bank, in the brick building then and there being found, then and there feloniously did steal, take and carry away, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Illinois.

2. And the Grand Jurors chosen, selected and sworn, in and for the County of McHenry, in the name and by the authority of the People of the State of Illinois, upon their oaths further present: That Donald Loftus, Alias David Loftus, Alias Dave Loftus, Alias Dan Foreman, Alias Richard Hollister, Alias George Willis, Alias Harold Gallagher, late of the County of McHenry and State of Illinois, on to-wit: the 19th day of September, in the year of our Lord, one thousand nine hundred and thirty, in the village of Algonquin, in the County aforesaid, a certain brick building, then and there being situate and being used as a banking house, then and there being the property of the Algonquin State Bank, a Banking Corporation organized under and operating by virtue of the laws of the State of Illinois, then and there wilfully and maliciously did enter therein, the doors and windows being open, with the intent to commit a felony therein, to-wit: larceny, and did then and there feloniously, steal, take and carry away divers United States treasury notes, National Bank bills, gold certificates and silver certificates, the exact denominations of which are to the Grand Jurors unknown, all legal tender of the United States and good and lawful money thereof, of the value of to-wit: Twenty-eight hundred sixty-nine ($2869) dollars, of the goods and chattels of the Algonquin [fols. 46-48] State Bank, in the said brick building then and there being found, then and there feloniously did steal, take and carry away, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the People of the State of Illinois.

Vincent S. Lumley, State's Attorney in and for McHenry County.

Upon the back of the same appear the following endorsements: Gen. No. 25506. Term No. —. McHenry County, Circuit Court, Jan. Term, A. D., 1932. The People vs.

BLEED THROUGH – POOR COPY

Donald Loftus, Alias David Loftus, Alias Dave Loftus, Alias Dan Foreman, Alias Richard Hollister, Alias George Willis, Alias Harold Gallagher. Indictment for Burglary. A True Bill. Frank C. Ferris, Foreman of the Grand Jury. Witnesses: George Keyes, Wilbur Brewer, Lester Edinger, Harold Reese, Gertrude Camm, Vincent S. Lumley, States Attorney. Capias Ordered and Bail Filed at $25,000.00. Edward D. Shurtleff, Judge.

[fols. 49-50] MINUTE ENTRIES—April 9, 1932

It appearing to the Court that the Grand Jury has returned an Indictment against the defendant herein it is ordered that a Capias Forthwith issue herein against the said defendant and that the said defendant's bail on said Capias be and it is hereby fixed at the sum of Twenty-five Thousand ($25,000.00) Dollars.

Now on this day come The People of the State of Illinois by Vincent S. Lumley, State's Attorney and the defendant, Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher in his own proper person also comes and the said defendant having been furnished with a copy of the Indictment and with lists of the witnesses and Grand and Petit Jurors for this Term of Court, it is therefore ordered that said defendant be arraigned for plea.

Whereupon comes the said defendant and states to the Court that he has no counsel and that his money is tied up and asks the Court for a week's continuance in order to get the proper counsel, Attorney W. W. Ryan, he at present being busy in Chicago.

Whereupon it is ordered by the Court that David R. Joslyn, Jr., be and he is hereby appointed temporary counsel to make motions in behalf of said defendant. And after conferring with David R. Joslyn, Jr. his counsel, again comes the said defendant and enters a temporary plea of not guilty of Burglary in manner and form as charged in said Indictment, until he has time to confer with his attorney, W. W. Ryan.

It is therefore ordered by the Court that said plea of not guilty be and same is hereby entered of record.

It is further ordered by the Court that this case be and the same is hereby continued until Monday April 18th, 1932.

[fol. 51] MINUTE ENTRIES—April 19, 1932

Now on this day this cause being called for trial come The People of the State of Illinois by Vincent S. Lumley, State's Attorney and the defendant Donald Loftus alias David Loftus alias David Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher in his own proper person also comes.

It is therefore ordered by the Court that the jury be and they are hereby called to the jury box and sworn to answer questions.

Whereupon the defendant is informed by the Court that Maurice T. Johnson has asked to be excused from further service on this case and the Court states to the Defendant that Maurice T. Johnson had been appointed to defend defendant in two previous cases, and hearing the testimony, under the circumstances of the case, the Court is disinclined to appoint any member of the bar as defendant's counsel to appear as counsel in this case.

Whereupon it is ordered by the Court that Maurice T. Johnson be and he is hereby excused from further service as counsel for defendant in this case.

Whereupon the Court instructs the defendant that he will give him time to get counsel and the defendant informs the Court that he has no funds of his own to employ counsel and that they are tied up.

Whereupon the Court asks the defendant if he wishes to examine any of the jurors and defendant informs the Court that he does not care to examine any of the jurors.

And now Vincent S. Lumley, State's Attorney and the defendant having accepted the jurors, the following jurors, to-wit: A. L. Bennett, Frank Henry, Harry Holmes, Carl Kublank, Richard Anderson, Oscar Strom, Emil Popenhagen, Lew Pellet, Frank Narowetz, Edward Sersen, Everett McClure and Frank Berg, twelve good and lawful [fol. 52] men, were duly sworn and empanneled according to law to try this case.

Whereupon examination of witnesses is commenced, the defendant having asked some of the witnesses questions and now the Court having heard all the proofs herein submitted, the testimony of witnesses produced and sworn in open Court, no arguments of counsel being made, and the Jury having heard the instructions of the Court, retire in charge of a sworn Bailiff to consider of their Verdict.

BLEED THROUGH – POOR COPY

And afterwards on this day come the Jury and return into open Court with their Verdict and it is ordered by the Court that the Verdict be and the same is hereby read by the Clerk and filed.

Which Verdict is in the words and figures following, to-wit:

VERDICT

We the jury find the defendant, David Loftus, guilty of burglary in the manner and form as charged in the indictment, and we further find from the evidence that the defendant, David Loftus, is of the age of 28 years.

Harry Holmes, Frank Narowetz, A. L. Bennett, Emil Popenhagen, Oscar Strom, Edward Sersen, R. B. Anderson, Carl A. Kublank, Frank Henry, Lewis E. Pellet, E. L. McClure, Frank R. Berg

[fols. 53-54] Whereupon comes the defendant and enters his motion for a new trial herein.

It is thereupon ordered by the Court that defendant's motion for a new trial be and it is hereby set for hearing on Friday April 22, 1932.

[fol. 55] MINUTE ENTRIES—April 22, 1932

Now on this day this cause coming on for hearing on defendant's motion for a new trial heretofore entered herein, come The People of the State of Illinois by Vincent S. Lumley, State's Attorney and the defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher in his own proper person as well as by David H. Feldman, his counsel, also comes. And now the Court having heard and duly considered the arguments of counsel and being fully advised in the premises, overrules said motion.

Whereupon comes the defendant by David H. Feldman his counsel and enters his motion in arrest of judgment and the Court having heard and duly considered the arguments of counsel and being fully advised in the premises, overrules said motion.

It is further ordered by the Court that leave be and is hereby given to file a bill of exceptions herein.

It is therefore ordered by the Court that judgment enter herein on the verdict of the jury finding the defendant guilty as charged in the indictment.

JUDGMENT

This day come the said People by Vincent S. Lumley, State's Attorney and the Defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher as well in his own proper person as by David H. Feldman, his counsel, also comes, and now neither the said defendant nor his counsel for him saying anything further why the judgment of the Court should not now be pronounced against him on the Verdict of guilty, heretofore rendered to the Indictment in this cause.

THEREFORE, it is ordered and adjudged by the Court that the said Defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher who is found [fols. 56-60] to be 28 years of age, and is convicted of the crime of Burglary herein, be sentenced to the Penitentiary of this State, at Joliet, Illinois, and it is further ordered and adjudged that the said Defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher be taken from the bar of this Court to the common jail of McHenry County and from thence by the Sheriff of McHenry County within ten days to the Penitentiary of this State, at Joliet, and be delivered to the Warden or Keeper of said Penitentiary; and the said Warden or Keeper is hereby required and commanded to take the body of the said Defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher and confine him in said Penitentiary in safe and secure custody, from and after the delivery thereof until discharged by due course of law, to-wit: from one year to life, the term of such imprisonment and commitment may be terminated earlier than the maximum by the Department of Public Welfare, by and with the approval of the Governor in the nature of a release or commutation of sentence or commitment.

It is further ordered that the said Defendant pay all the costs of these proceedings and that execution issue therefor.

BLEED THROUGH – POOR COPY

It is further ordered by the Court that the sentence in this case is to run consecutively with the sentences in Cases Nos. 25,503 and 25,505 that is, it commences to run after the expiration of the sentences in 25,503 and 25,505.

It is further ordered by the Court that Sixty days be allowed in which to file Bill of Exceptions.

[fol. 61] In the Circuit Court of McHenry County

People of the State of Illinois

vs.

Donald Loftus, Alias David Loftus, Alias Dave Loftus, Alias Dan Foreman, Alias Richard Hollister, Alias George Willis, Alias Harold Gallagher

Indictment for Burglary—Filed April 9, 1932

1. The Grand Jurors chosen, selected and sworn, in and for the County of McHenry, in the name and by the authority of the People of the State of Illinois, upon their oaths present: That Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, late of the County of McHenry and State of Illinois, to-wit: the 26th day of November, in the year of Our Lord, one thousand nine hundred and thirty, in the village of Marengo, in the County aforesaid, a certain brick building, then and there being situate, and being used as a banking house, then and there being the property of the First National Bank of Marengo, a Banking Corporation organized under and operating by virtue of the Federal Laws of the United States, then and there wilfully and forcibly did break and enter therein, with the intent to commit a felony therein, to-wit: Larceny, and did then and there feloniously steal, take and carry away divers United States treasury notes, National Bank bills, gold certificates and silver certificates, the exact denominations of which are to the Grand Jurors unknown, all legal tender of the United States, and good [fol. 62] and lawful money thereof, of the value of to-wit: Twelve Thousand, one hundred fifty ($12,150) dollars, of the goods and chattels of the said First National Bank of Marengo, a Banking Corporation, in the said brick building,

then and there being found, then and there feloniously, did steal, take and carry away, contrary to the form of the Statute in such case made and provided and against the peace and dignity of the People of the State of Illinois.

2. And the Grand Jurors chosen, selected and sworn, in and for the County of McHenry, in the name and by the authority of the People of the State of Illinois, upon their oaths further present: That Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher, late of the County of McHenry and State of Illinois, on to-wit: the 26th day of November, in the year of our Lord, one thousand nine hundred and thirty, in the village of Marengo, in the County aforesaid, a certain brick building then and there being situate and being used as a banking house, then and there being the property of the First National Bank of Marengo, a Banking Corporation organized under and operating by virtue of the Federal Laws of the United States then and there maliciously and wilfully did enter therein, the doors and windows being open, with the intent to commit a felony therein, to-wit: larceny, and did then and there feloniously steal, take and carry away divers United States treasury notes, National Bank bills, gold certificates and silver certificates, the exact denominations of which are to the Grand Jurors unknown, all legal tender of the United States and good and lawful money thereof, of the value of to-wit: Twelve thousand, one hundred fifty ($12,150) dollars, of the goods and chattels of the said First [fols. 63-65] National Bank of Marengo, a Banking Corporation, in the brick building then and there being found, then and there feloniously did steal, take and carry away, contrary to the form of the statute in such case made and provided and against the peace and dignity of the same People of the State of Illinois.

Vincent S. Lumley, State's Attorney in and for McHenry County, Illinois.

Upon the back of the same appear the following endorsements: Gen. No. 25504. Term No. —. McHenry County Circuit Court, Jan. Term A. D. 1932. The People vs. Donald Loftus Alias David Loftus Alias Dave Loftus Alias Dan Foreman Alias Richard Hollister Alias George Willis Alias Harold Gallagher. Indictment for Burglary. A True

BLEED THROUGH – POOR COPY

Bill. Frank C. Ferris, Foreman of the Grand Jury. Witnesses Harold Fiertag, Laura Renwick, Lester Edinger, Harold Reese, Richard Patrick. Vincent S. Lumley, State's Attorney. 33/437. Capias Ordered and Bail Fixed at $25000. Edward D. Shurtleff, Judge.

[fols. 66-67] Minute Entries—April 9, 1932

It appearing to the Court that the Grand Jury has returned an indictment against the defendant herein it is ordered that a Capias forthwith issue herein against the said defendant and that the said defendant's bail on said Capias be and it is hereby fixed at the sum of Twenty-five Thousand ($25,000.00) Dollars.

Now on this day come The People of the State of Illinois by Vincent S. Lumley, State's Attorney and the defendant, Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher in his own proper person also comes and the said defendant having been furnished with a copy of the indictment and with lists of the witnesses and Grand and Petit Jurors for this Term of Court, it is therefore ordered that said defendant be arraigned for plea.

Whereupon comes the said defendant and states to the Court that he has no counsel and that his money is tied up and asks the Court for a week's continuance in order to get the proper counsel, Attorney W. W. Ryan, he at present being busy in Chicago.

Whereupon it is ordered by the Court that David R. Joslyn, Jr. be and he is hereby appointed temporary counsel to make motions in behalf of said defendant. And after conferring with David R. Joslyn, Jr. his counsel, again comes the said defendant and enters a temporary plea of not guilty of Burglary in manner and form as charged in said indictment, until he has time to confer with his attorney, W. W. Ryan.

It is therefore ordered by the Court that said plea of not guilty be and same is hereby entered of record.

It is further ordered by the Court that this cause be and the same is hereby continued until Monday April 18th, 1932.

[fol. 68] MINUTE ENTRIES—April 19, 1932

Now on this day this case being called for trial come The People of the State of Illinois by Vincent S. Lumley, State's Attorney and the defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher in his own proper person also comes.

It is therefore ordered by the Court that the Jury be and they are hereby called to the jury box and sworn to answer questions.

Whereupon the Court informs the defendant that he will give the defendant time to procure counsel and the defendant informs the Court that he has no counsel and no funds to procure counsel as his funds are tied up.

Whereupon the Court informs the defendant that he is disinclined to appoint any member of the bar as defendant's counsel owing to the circumstances in the previous cases where counsel was appointed.

And the Court having asked the defendant if he wished to examine any of the jurors and being informed by the defendant that he did not care to examine any of the jurors and now Vincent S. Lumley, State's Attorney, and the defendant having accepted the Jury, the following jurors, to-wit: Jas. Doherty, Waite Richards, Wm. Wolf, Melvin B. Johnson, Scott Thayer, Al Klemme, George Pugh, Geo. Riedesel, Wm. Graunke, Edward Becking, Ben Williams and John Shannon, twelve good and lawful men, were duly sworn and empanneled according to law to try this case.

Whereupon examination of witnesses by counsel is commenced, the defendant having asked some questions, and now the Court and Jury having heard all the proofs herein submitted, the testimony of witnesses produced and sworn in open Court, no arguments of counsel being made and the jury having heard the instructions of the Court, retire in [fols. 69-70] charge of a sworn bailiff to consider of their Verdict.

And afterwards on this day come the jury and return into open Court with their Verdict and it is ordered by the Court that the Verdict be and the same is hereby read by the Clerk and filed.

Which Verdict is in the words and figures following, to-wit:

BLEED THROUGH – POOR COPY

VERDICT

We the jury find the defendant, David Loftus, guilty of burglary in the manner and form as charged in the indictment, and we further find from the evidence that the defendant, David Loftus, is of the age of 35 years.

Alfred H. Klemme, Waite Richards, Geo. Riedesel, George Pugh, Wm. E. Graunke, Scott Thayer, Wm. J. Wolf, Melvin B. Johnson, Ben B. Williams, John Shannon, Ed C. Becking, James E. Doherty.

Whereupon comes the defendant and enters his motion for a new trial herein.

It is thereupon ordered by the Court that defendant's motion for a new trial be and it is hereby set for hearing on Friday April 22, 1932.

[fol. 71] MINUTE ENTRIES—April 22, 1932

Now on this day this cause coming on for hearing on defendant's motion for a new trial heretofore entered herein, come The People of the State of Illinois by Vincent S. Lumley, State's Attorney and the defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher in his own proper person as well as by David H. Feldman, his counsel, also comes. And now the Court having heard and duly considered the arguments of counsel and being fully advised in the premises, overrules said motion.

Whereupon comes the defendant by David H. Feldman his counsel and enters his motion in arrest of judgment and the Court having heard and duly considered the arguments of counsel and being fully advised in the premises, overrules said motion.

It is further ordered by the Court that leave be and is hereby given to file a bill of exceptions herein.

It is therefore ordered by the Court that judgment enter herein on the verdict of the jury finding the defendant guilty as charged in the indictment.

JUDGMENT

This day come the said People by Vincent S. Lumley, State's Attorney and the defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias

Richard Hollister, alias George Willis alias Harold Gallagher as well in his own proper person as by David H. Feldman, his counsel, also comes, and now neither the said Defendant nor his counsel for him saying anything further why the judgment of the Court should not now be pronounced against him on the Verdict of Guilty, heretofore rendered to the Indictment in this cause.

Therefore, it is ordered and adjudged by the Court that the said Defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister [fols. 72-75] alias George Willis alias Harold Gallagher who is found to be 35 years of age, and is convicted of the crime of Burglary herein, be sentenced to the Penitentiary of this State, at Joliet, Illinois, and it is further ordered and adjudged that the said Defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher be taken from the bar of this Court to the Common Jail of McHenry County and from thence by the Sheriff of McHenry County within ten days to the Penitentiary of this State at Joliet, and be delivered to the Warden or Keeper of said Penitentiary; and the said Warden or Keeper is hereby required and commanded to take the body of the said Defendant Donald Loftus alias David Loftus alias Dave Loftus alias Dan Foreman alias Richard Hollister alias George Willis alias Harold Gallagher and confine him in said Penitentiary in safe and secure custody, from and after the delivery thereof until discharged by due course of law, to-wit: from one year to life, the term of such imprisonment and commitment may be terminated earlier than the maximum by the Department of Public Welfare, by and with the approval of the Governor in the nature of a release or commutation of sentence or commitment.

It is further ordered that the said Defendant pay all the costs of these proceedings, and that execution issue therefor.

It is further ordered by the Court that the sentence in this case is to run consecutively to the sentences in Cases Nos. 25,503, 25,505, and 25,506, that is, that the sentence in this case No. 25504 commence to run at the expiration of the sentences in 25,503, 25,505, and 25,506.

It is further ordered by the Court that Sixty days be allowed in which to file Bill of Exceptions.

BLEED THROUGH – POOR COPY

[fol. 76] In the Supreme Court of Illinois, September Term, A. D. 1946

General No. 29620

People of the State of Illinois, Defendant in Error,

vs.

Donald Loftus, Plaintiff in Error

Writ of Error to Circuit Court of McHenry County

Honorable Edward D. Shurtleff, Judge Presiding

Abstract of Record—Filed July 18, 1946

Rec. page

1. Placita.
2. Recall of Grand Jury.
3. Return of Indictment on April 9, 1932.
4. Indictment No. 25503, Count 1:

The Grand Jurors present that Donald Loftus, late of the County of McHenry, State of Illinois, on November 26, 1930, at and within said County and State, in and upon one Harold Fiertag feloniously did make an assault while armed with deadly weapons, to-wit: pistols, and the said Harold Fiertag, in bodily fear and danger of his life, feloniously did put, of the value of Twelve thousand, one hundred fifty ($12,150) dollars, of the goods and chattels of the First National Bank of Marengo, Illinois, a Banking Corporation, then and there being in his care, custody and control and against the will of the said Harold Fiertag, feloniously did rob, steal, take and carry away, contrary to the Statute, etc.

[fol. 77] 5. Count 2:

(The same as Count 1: Armed Robbery.)

6. Count 3:

(The same as Count 1: Armed Robbery, with the exception that Laura Renwick instead of Harold Fiertag was the one assaulted.)

7. Count 4:

(The same as Count 3: Armed Robbery.)

8. Indictment No. 25503 filed on April 9, 1932.
9. Capias.
10. Proceedings of April 9, 1932.

11. Defendant arraigned. Court appoints Counsel. Plea of Not Guilty entered. Cause continued until April 18, 1932.
12. Proceedings of April 18, 1932.
13. Motion to Quash the Indictment; denied. Jury called.
14. Come the following jurors: Simon Michels, A. L. Bennett, Frank Henry, Harry Holmes, Carl Kublank, Richard Anderson, Oscar Strom, Clarence Niesen, Al. Klemme, Elmer Miner, Lee Jacobs, and Gust Larson.

Motion for time to get witnesses. Court allows Counsel ten minutes to confer with defendant as to witnesses.

Verdict of the Jury:

15. "We, the jury, find the defendant, David Loftus, guilty of robbery in manner and form as charged in the indictment, and we further find that at the time of the commission of the robbery, the said defendant, David Loftus, was then armed with a dangerous weapon, to-wit: a pistol, and we further find from the evidence that the defendant, David Loftus, is about the age of 34 years."

Motion for a New Trial.
16. Proceedings of April 22, 1932.
17. Motion for a New Trial overruled.
Motion in Arrest of Judgment; overruled.
Judgment on Verdict.
[fol. 78] 18. Sixty days time to file Bill of Exceptions.
19. Certification of the Clerk.

Indictment No. 25505

20. Placita.
21. Recall of Grand Jury.
22. Return of Indictment on April 9, 1932.
23. Indictment No. 25505, Count 1:

The Grand Jurors present that Donald Loftus, late of the County of McHenry, State of Illinois, on September 19, 1930, at and within said County and State, in and upon one George Keyes feloniously did make an assault while armed with deadly weapons, to-wit: pistols, and the said George Keyes, in bodily fear and danger of his life, felo-
24. niously did put, of the value of Twenty-eight hundred sixty-nine ($2869) dollars, of the goods and chattels of the Algonquin State Bank, of Algonquin, Illinois, a Banking Corporation, then and there being in his care, custody and control and against the will of the said George Keyes,

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feloniously and violently did rob, steal, take and carry away, contrary to the Statute, etc.

Count 2:

(The same as Count 1: Armed Robbery.)

25. Count 3:

(The same as Count 1: Armed robbery, with the exception that Wilbur Brewer instead of George Keyes was the one assaulted.)

26. Count 4:

(The same as Count 3: Armed Robbery.)

27. Indictment No. 25505 filed on April 9, 1932.

28. Capias.

29. Proceedings of April 9, 1932.

[fol. 79] 30. Defendant arraigned. Court appoints Counsel. Plea of Not Guilty entered. Cause continued until April 18, 1932.

31. Proceedings of April 18, 1932.

32. Jury called.

33. Proceedings of April 19, 1932.

34. Telegram stating that Defendant's Counsel cannot appear for him on that day. Court appoints other Counsel.

Come the following jurors: Peter Wirfs, P. Ben Anderson, Clyde Hayford, Rupert D. Collier, Mack Peterson, Tom McGuire, Earl Young, Harry Turner, Wm. R. Bickler, Ray L. Wilson, Henry Lingenfelter and Clarence L. Judson.

Examination of witnesses.

35. Verdict of the Jury:

"We, the jury, find the defendant, Donald Loftus, guilty of robbery in manner and form as charged in the indictment, and we further find that at the time of the commission of the robbery, the said defendant, Donald Loftus, was then armed with a dangerous weapon, to-wit: a pistol, and we further find from the evidence that the defendant, Donald Loftus, is about the age of 34 years."

36. Leave given Plaintiff to withdraw Exhibit 1.

Motion for a New Trial.

37. Proceedings for April 22, 1932.

38. Motion for a New Trial overruled.

Judgment on Verdict.

39. It is further ordered by the Court that the Sentence in this case is to run consecutively with the sentence of Case No. 25503, that is, that the sentence in this case No.

25505 commence to run at the expiration of the sentence in 25503.

Sixty days time to file Bill of Exceptions.

40. Certification of the Clerk.

[fol. 80] Indictment No. 25506

41. Placita.

42. Proceedings of April 9, 1932.

Recall of Grand Jury.

43. Indictment No. 25506 filed on April 9, 1932.

44. Indictment No. 25506, Count 1:

The Grand Jurors present that Donald Loftus, late of the County of McHenry, State of Illinois, on September 19, 1930, in the village of Algonquin, in the county aforesaid, a certain brick building, the property of the Algonquin State Bank, a Banking Corporation, then and there wilfully and forcibly did break and enter therein, with the intent to commit a felony therein, to-wit: larceny, and did

45. then and there feloniously steal, take and carry away, good and lawful money of the value of to-wit: Twenty-eight hundred sixty-nine ($2869) dollars, of the goods and chattels of the said Algonquin State Bank, in the brick building being found, feloniously did steal, take and carry away, contrary to the Statute, etc.

46. Count 2:

(Burglary; the doors and windows being open.)

Endorsement of indictment No. 25506.

47. Capias.

48. Proceedings of April 9, 1932.

49. Defendant arraigned. Court appoints temporary Counsel. Plea of Not Guilty entered.

50. Proceedings of April 19, 1932.

51. Defendant is informed by the Court that Maurice T. Johnson has asked to be excused from further service on this case and the Court states to the Defendant that Maurice T. Johnson had been appointed to defend Defendant in two previous cases, and hearing the testimony, under [fol. 81] the circumstances of the case, the Court is disinclined to appoint any member of the bar as defendant's Counsel to appear as Counsel in this case.

Court orders Maurice T. Johnson be excused as Counsel.

Court instructs Defendant that he will give him time to

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get counsel and defendant informs the Court that he has no funds to employ counsel.

Court asks the defendant if he wishes to examine any of the jurors and defendant informs the Court that he does not care to examine any of the jurors.

The following named jurors were duly accepted: A. L. Bennett, Frank Henry, Harry Holmes, Carl Kublank, Richard Anderson, Oscar Strom, Emil Popenhagen, Lew Pellet, Frank Narowets, Edward Sersen, Everett McClure, and Frank Berg.

52. Examination of witnesses.

Verdict of the Jury:

"We, the jury, find the defendant, David Loftus, guilty of burglary in the manner and form as charged in the indictment, and we further find from the evidence that the defendant, David Loftus, is of the age of 28 years."

53. Motion for a New Trial entered by Defendant.

54. Proceedings of April 22, 1932.

55. Motion for a New Trial overruled.

Motion in Arrest of Judgment; overruled.

Judgment on Verdict.

56. It is further ordered by the Court that the sentence in this case is to run consecutively with the sentences in Cases Nos. 25503, 25505, that is, it commences to run after the expiration of the sentences in 25503 and 25505.

57. Sixty days time to file Bill of Exceptions.

Certification of the Clerk.

[fol. 82] Indictment No. 25504

58. Placita.

59. Indictment No. 25504 filed on April 9, 1932.

60. Recall of Grand Jury.

61. Indictment No. 25504, Count 1:

The Grand Jurors present that Donald Loftus, late of the County of McHenry, State of Illinois, on November 26, 1930, at and within the village of Marengo, in said County, a certain brick building, and being used as a banking house, being the property of the First National Bank of Marengo, a Banking Corporation, wilfully and forcibly did break and enter therein, with the intent to commit a felony therein, to-wit: Larceny,

62. and did feloniously steal, take and carry away, Twelve thousand, one hundred fifty ($12,150) dollars, of the goods and chattels of the said First National Bank of Marengo, a Banking Corporation, feloniously, did steal, take and carry away, contrary to the Statute, etc.

Count 2: (Burglary; the doors and windows being open.)

63. Endorsement of indictment No. 25504.

64. Capias.

65. Proceedings of April 9, 1932.

66. Defendant arraigned. Court appoints temporary Counsel. Plea of Not Guilty entered.

67. Proceedings of April 19, 1932.

68. Jury called. Court informs defendant that he is disinclined to appoint any member of the bar as defendant's counsel owing to the circumstances in the previous cases where counsel was appointed. And the Court having asked the defendant if he wished to examine any of the jurors and being informed by the defendant that he did not care to examine any of the jurors the following named jurors were [fol. 83] duly accepted: Jas. Doherty, Waite Richards, Wm. Wolf, Melvin B. Johnson, Scott Thayer, Al Klemme, George Pugh, Geo. Riedesel, Wm. Graunke, Edward Becking, Ben Williams, and John Shannon.

Examination of witnesses:

69. Verdict of the Jury:

"We, the jury find the defendant, David Loftus, guilty of burglary in the manner and form as charged in the indictment, and we further find from the evidence that the defendant, David Loftus, is of the age of 35 years."

Motion for a New Trial entered by defendant.

70. Proceedings of April 22, 1932.

71. Motion for a New Trial overruled.

Motion in Arrest of Judgment; overruled.

Judgment on Verdict.

72. It is further ordered by the Court that the sentence in this case is to run consecutively to the sentences in Cases Nos. 25503, 25505, and 25506, that is, that the sentence in this case No. 25504, commence to run at the expiration of the sentences in 25503, 25505, and 25506.

Sixty days time to file Bill of Exceptions.

73. Certification of the Clerk.

[fol. 84] ASSIGNMENTS OF ERRORS

I

The trial court erred in placing defendant on trial for the charges of Burglary as defendant had already been tried and convicted of the charges of Robbery, arising out of the same crimes.

II

The trial court erred in withdrawing temporary counsel and denying the appointment of other counsel, forcing defendant to continue the case without counsel.

III

The entry of consecutive sentences was not made in accordance with the law, and therefore the sentences should be considered to run consecutively.

IV

The trial court erred in allowing seven (7) of the petit jurors to serve as the various trials in these causes, of which there were four.

V

Defendant was denied of due process and equal protection of the laws, in violation of both state and federal constitutions.

Wherefore, plaintiff in error prays that the judgment of the Court below may be reversed.

Respectfully submitted, Donald Loftus, Plaintiff in Error, Attorney Pro Se.

(M. ben Solomon) on Brief.

[fol. 85] IN SUPREME COURT OF ILLINOIS

MINUTE ENTRY—September 16, 1946

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that plaintiff in error hath filed herein a duly certified transcript of the record and proceedings of the Court below,

together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said defendant in error having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 86] IN SUPREME COURT OF ILLINOIS

OPINION—Filed November 20, 1946

[fol. 87] Mr. Justice Stone delivered the opinion of the court:

By this writ of error plaintiff in error, appearing *pro se*, seeks the reversal of four judgments of the circuit court of McHenry county, entered in four separate and distinct cases, in April, 1932. The cause is here upon the common-law record in each case.

In circuit court case No. 25503 the jury found plaintiff in error guilty of robbery while armed with a dangerous weapon and his age to be 34 years. Motions for a new trial and in arrest of judgment were overruled and judgment entered on the verdict. What judgment was entered is not shown by the common-law record filed herein.

In case No. 25505 the jury found him guilty of armed robbery. Motion for a new trial was overruled and, as in No. 25503, the record shows: "Judgment on the verdict. It is further ordered by the court that sentence in this case is to run consecutively with the sentence in case No. 25503, that is, that the sentence in this case, No. 25505, commence to run at the expiration of the sentence in No. 25503."

In case No. 25506, the indictment charged burglary and larceny of $2869 from the Algonquin State Bank. The jury found plaintiff in error guilty as charged. Motions for a new trial and in arrest of judgment were overruled

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and, as in No. 25505, the record shows: "Judgment on the verdict. It is further ordered by the court that the sentence in this case is to run consecutively with the sentences in cases No. 25503 and 25505. That is, it commences to run after the expiration of the sentences in 25503 and 25505."

In case No. 25504 the indictment charged burglary and larceny of $12,150 from the First National Bank of Marengo. The jury found plaintiff in error guilty as charged. Motions for a new trial and in arrest of judgment were overruled and, as in the previous cases, the transcript of the record states: "Judgment on the verdict. It is further ordered by the court that the sentence in this case is to run consecutively to the sentences in Cases Nos. 25503, 25505 and 25506, that is, that the sentence in this case No. 25504, commence to run at the expiration of the sentences in 25503, 25505 and 25506."

The errors relied upon for reversal are that the trial [fol. 88] court erred: (1) in placing plaintiff in error on trial for the crimes of burglary, as he had been tried and convicted of the crime of robbery arising out of the same facts; (2) in withdrawing temporary counsel and denying the appointment of other counsel, forcing him to continue the case without counsel; (3) in entering consecutive sentences, which was not in accordance with the law, as the sentences should be considered to run concurrently; (4) in allowing seven of the petit jurors to serve on the various trials in these causes, of which there were four, and (5) in that he was denied due process and equal protection of the law, in violation of both State and Federal constitutions.

Defendant in error in its brief has filed a motion to dismiss the writ of error upon the ground that there is no law or rule of court which permits the filing of one writ of error to review more than one record. No statute or rule of court is cited in support of the motion. We know of no such statute and rule where, as here, the attack is upon the procedure in one case, necessarily involving examination of the record in another case to determine the error assigned in a particular case or record. It is within the power of this court, either of its own motion or upon motion of either party to the record to consolidate several cases for hearing. In *People* v. *Wooten*, 392 Ill. 542, this court, in one writ of error, passed upon the validity of three separate and distinct judgments in criminal cases.

Plaintiff in error's first contention is that it was error to place him on trial in Nos. 25504 and in 25506, each of which charged burglary, because he had *been* previously been convicted in Nos. 25503 and 25505 of armed robbery, and that the armed robbery and burglary charges arose from the same offense, therefore he was twice put in jeopardy by his trial and convictions in Nos. 25504 and 25506 for the same offenses for which he was convicted in 25503 and 25505.

Section 10 of article II of the constitution of 1870 provides: "No person shall be * * * twice put in jeopardy for the same offense." What constitutes the "same offense" was discussed at length by this court in the early case of *Freeland* v. *People,* 16 Ill. 380. It was there stated that "if the defendant upon the first indictment could not have been convicted of the *offense* described in the second, then an acquittal or conviction upon the former is no bar to the latter. * * * If the defendant could not, by any [fol. 89] legal possibility have been convicted upon the former prosecution of the *offense* charged in the second, he can in no just sense be said to be in peril of a second conviction on the *same offense.*" Citing in support of this doctrine, 1 Chitty's Crim. Law, sec. 456; Archbold's Crim. Pl. 82; 3 Greenleaf on Evidence, sec. 36. The foregoing rule has been approved by this court in *Spears* v. *People,* 220 Ill. 72; *Campbell* v. *People,* 109 Ill. 565; *Ferguson* v. *People,* 90 Ill. 510; *Guedel* v. *People,* 43 Ill. 226.

Plaintiff in error insists the indictments in Nos. 25503 and 25504, charging respectively armed robbery and burglary, arose out of one and the same transaction, and that the indictments in Nos. 25505 and 25506, charging respectively armed robbery and burglary, also arose out of another single transaction. No reference is made in the indictments for armed robbery to the crimes having been committed in a building, or any other place which the statute names in defining burglary, nor was plaintiff in error accused in those indictments of wrongfully entering any such place. When plaintiff in error was placed on trial in cases numbered 25505 and 25506, it would not necessarily follow, even though that indictment were based on the same acts as those alleged in 25503 and 25504, that sentence under convictions in the last two numbered cases would bar prosecution under numbers 25505 and 25506. It is the rule that a person by one act may, in law, commit

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several offenses. *People* v. *Nall*, 242 Ill. 284; *Nagel* v. *People*, 229 Ill. 598.

No bills of exceptions have been filed, and no showing that a plea of former conviction was entered. There is no merit to this contention.

Plaintiff in error next contends it was error to permit temporary counsel appointed by the court to withdraw and to refuse to appoint new counsel for him, and in forcing him to trial without counsel. The record shows that in No. 25503 he was represented by the same counsel of his own choosing. In Nos. 25506 and 25504 counsel appointed by the court was permitted to withdraw. The court announced that "under the circumstances of the case he was disinclined to appoint any member of the bar as defendant's counsel to appear as counsel in this case." The court instructed the defendant that he would give him time to get counsel and defendant informed the court that he had no funds to employ counsel.

In No. 25503 plaintiff in error was represented by coun- [fol. 90] sel of his own choice. In 25505 counsel of his choice, by telegram, advised the State's Attorney that he could not be present at the trial. The court thereupon appointed counsel to defend and the cause proceeded to trial. In 25506 the court permitted counsel, appointed to defend plaintiff in error, to withdraw. The court advised plaintiff in error that he would give him time to get counsel, and plaintiff in error advised the court that he had no funds of his own to employ counsel and that they were "all tied up." The record shows that the same took place in No. 25504.

Under the statute, (Ill. Rev. Stat. 1931, chap. 38, par. 754,) the court is required to provide counsel for a defendant only when he shall state on oath he is unable to procure counsel. (*People* v. *Batey*, 392 Ill. 390; *People* v. *Fuhs*, 390 Ill. 67; *People* v. *Corbett*, 387 Ill. 41; *People* v. *Parcora*, 358 Ill. 448.) There is nothing in the record to show that plaintiff in error complied with the provisions of the statute in force at the time of his trials.

Plaintiff in error next contends these consecutive sentences were not in accordance with the law, and therefore, the sentences should be considered to run concurrently.

Since *Johnson* v. *People*, 83 Ill. 431, consecutive sentences have been held legal. To withhold sentence until the expiration of the former sentence would not only prove an

incovenience and cause confusion but would be of no advantage to the accused. (*People* v. *Decker*, 347 Ill. 258; *Fitzpatrick* v. *People*, 98 Ill. 269.) Jurisdiction to inflict cumulative punishment does not depend on whether both convictions shall be before the same tribunal, but whether the accused has, in fact, committed distinct violations of the law which merit separate, and therefore cumulative, penalties. The judgment entered in a case of cumulative punishment must be of such certainty that the commencement of the second and termination of the previous sentence may be seen from the record. It is not necessary that the judgment fix the day on which each successive term of imprisonment commences, but it is sufficient that each successive term begins at the expiration of the next previous one. It is obvious that the time for the commencement of the succeeding punishment could not be more definitely determined, since the prior term of imprisonment might be shortened by good behavior or by other agencies bringing about such result. (*People* v. *Decker*, 347 Ill. 258.) In the instant cases each sentence was from "one [fol. 91] year to life, the term of such imprisonment and commitment may be terminated earlier than the maximum, by the Department of Public Welfare, by and with the approval of the Governor in the nature of a release or commutation of sentence or commitment." Sentence in 25505 was to commence on the termination of sentence in 25503. Sentence in 25506 was to commence on the termination of the sentences, in 25503 and 25505, and sentence in 25504 was to commence on the termination of the sentences in 25503, 25505 and 25506. Plaintiff in error relies upon *People* v. *Wooten*, 392 Ill. 542, in support of his contention. That case is not in point, as the first two sentences were erroneous and the defendant had served more than the maximum term of imprisonment for which he could have been lawfully sentenced, therefore the erroneous judgments were each reversed. The judgment sentencing the defendant to one year to life, to commence after the expiration of the erroneous judgments was held to commence on the day of his incarceration in the penitentiary. Orders of commitment of plaintiff in error to consecutive terms of imprisonment were within the jurisdiction of the court and were neither void nor erroneous, and plaintiff in error's contention that his sentences should be held to run concurrently is without merit.

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Plaintiff in error's next contention is that it was error to allow seven of the petit jurors to serve on the various trials. There is no bill of exceptions in the record. There is nothing in the common-law record showing that any challenge was interposed to the qualification of any juror either for cause or peremptorily. This contention cannot be considered.

Plaintiff in error does not argue his assignment of error that he was denied due process and equal protection of the law, in violation of the State and Federal constitutions, except to say that he did not have fair trials.

The record in this case presents an unusual situation. An examination of the common-law record in each case does not show any reversible error, therefore the judgments in each case are affirmed.

Judgments affirmed.

[fols. 92-94] IN SUPREME COURT OF ILLINOIS

No. 29620

PEOPLE STATE OF ILLINOIS, Defendant in Error

vs.

DONALD LOFTUS, Plaintiff in Error

Error to Circuit Court McHenry County

JUDGMENT—November 20, 1946

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgments aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgments of the Circuit Court of McHenry County aforesaid, be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error.

[fol. 95] IN SUPREME COURT OF ILLINOIS

PETITION FOR REHEARING—Filed December 12, 1946

May It Please the Court:

Plaintiff in Error, Donald Loftus, respectfully suggests that this Honorable Court reconsider its Order of Affirmance of this cause, which was filed on November 20, 1946.

We respectfully contend that this Court overlooked and misapprehended the entire facts and the Records submitted to it.

We wish to call this Court's attention to its statement that plaintiff in error was seeking Reversal of *four* judgments. We only asked the Court to Reverse *two* judgments, not *four*. Page 19 of our Brief shows that plaintiff in error suggested to the Court that if it find that he did commit two robberies, under Indictment Nos. 25503 and 25505, then it must hold that the convictions under Indictment Nos. 25506 and 25504 are void, and should be Reversed.

The Court stated: "What judgment was entered is not shown by the common-law record." The statutory sentence for the crime of Robbery in 1932, was for a term of "one year or for life." Chap. 38, Sec. 501, Ill. Rev. Stat. 1931. [fol. 96] The statutory sentence for the crime of Burglary in 1932, was also for a term of "one year or for life." Chap. 38, Sec. 84, Ill. Rec. Stat. 1931. The sentence of the Court is read into the judgment. People v. Montgomery, 377 Ill. 241.

Plaintiff in error contends that he was charged under Indictment No. 25503 with the Armed Robbery of the First National Bank of Marengo, Illinois, on November 26, 1930, of the amount of $12,150. Indictment No. 25504 alleges the Burglary of the same bank, on the same date, and the same amount of money stolen.

Plaintiff in error did not commit two separate and distinct crimes involving the same set of circumstances. Under Indictment No. 25505 he was charged with the Armed Robbery of the Algonquin State Bank, of Algonquin, Illinois, on September 19, 1930, of the amount of $2869. Indictment No. 25506 alleges the Burglary of the same bank, on the same date, and the same amount of money stolen.

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This Court cites Freeland v. People, 16 Ill. 380, where it held:

> "If the defendant upon the first conviction could not have been convicted of the offense described in the second, the*b* a*b* acquittal or conviction upon the former is no bar to the latter. . . . If the defendant could not, by any legal possibility have been convicted upon the former prosecution of the *offense* charged in the second, he can in no just sense be said to be in peril of a second conviction on the *same offense*. Citing cases."

Both Robbery and Burglary contain within themselves the crime of Larceny. If one is tried for Robbery or Burglary, he may be found guilty of the lesser crime of Larceny. This the Court will have to admit. Therefore, plaintiff in [fol. 97] error could have been convicted of the former offense, which was charged in the second, and which is not based on either sound reasoning or the statute, for it stated:

> "No reference is made in the indictments for armed robbery to the crimes having been committed in a building, or any other place which the statute names in defining burglary, nor was plaintiff in error accused in those indictments of wrongfully entering any such place."

The gist of the crime of Robbery, is the force or intimidation. People v. Carpenter, 315 Ill. 87; People v. Stathas, 356 Ill. 313; People v. Guinto, 374 Ill. 404. The indictments in the instant cause contain every basic element which the statute provides. Chap. 38, Sec. 501, Ill. Rev. Stat. 1931. It is not necessary to state that a robbery was committed within any building, nor was it necessary to charge him with the wrongful entry of any building, in an Indictment for Robbery.

Burglary is the entering into a building, with the intent to commit Robbery or Larceny. Chap. 38, Sec. 84, Ill. Rev. Stat. 1931. The gravamen of Burglary is the felonious intent of defendant at the time he enters. People v. Glickman, 377 Ill. 360; People v. Myler, 374 Ill. 72; People v. Weiss, 367 Ill. 580.

Our contention is, that plaintiff in error cannot be charged with the crimes of *Robbery and Burglary* under the same set of circumstances. When plaintiff in error walked into

those banks, through open doors and in the daytime, while those banks were open for business, and committed the crimes of Armed Robbery, he did not commit two separate and distinct crimes. If he was guilty of Armed Robbery (which is admitted), then he certainly was not guilty of [fol. 98] Burglary. On the other hand, if this Court believes he was guilty of Burglary, then certainly it cannot state that he was also guilty of Robbery. Under the statute, if plaintiff in error is guilty of Burglary with intent to commit Larceny, as charged in the indictments, then he should not have been also found guilty of Robbery.

Plaintiff in error did not commit more than one offense, and he should have been charged only with one or the other offense. By indicting, trying and convicting him on both offenses, he was certainly placed in jeopardy, contrary to the state and federal constitutional provisions.

As both the Robbery and Burglary indictments charged plaintiff in error "did steal, take and carry away," he was charged with the identical crimes of "Larceny" in each indictment. This was double jeopardy, for he was already convicted of the Robbery charges first, then he was placed on trial for the Burglary charges.

The cases cited by this Court, People v. Ball, 242 Ill. 284, and Nagel v. People, 229 Ill. 598, are nowise in point. In the Nagel case, there was an acquittal for Robbery, then a conviction for Burglary with Intent to murder. How can this Court apply such a case to the instant one?

This Court relies upon the fact that no Bill of Exceptions has been filed, and therefore no showing that a plea of former conviction was entered. We will discuss this matter further on in our Brief.

It is contended by the Court, that there is nothing in the record to show that plaintiff in error complied with the [fol. 99] provisions of the statute. (Chap. 38, Sec. 730, Ill. Rev. Stat. 1931), in force at the time of his trials. It may readily be seen, that all four common-law records are prepared almost exactly alike. Cause No. 25503 shows that plaintiff in error was arraigned on April 9, 1932, at which time the trial court appointed Counsel. The other indictments show the same. The trial was continued until April 18, 1932.

This Court's statement, that plaintiff in error never complied with the statute, by stating upon oath that he is unable to provure counsel, is not based on the Record. Where-

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fore does this Court come to such a conclusion? Is it not a fact that the trial court *did* appoint Counsel on April 9, 1932, at the time of arraignment? Does not the record show that plaintiff in error stated to the court that he had no money? Surely the trial court did not appoint counsel *until* plaintiff in error placed himself squarely within the statute. The certified record supports our contention—not the Court's. As this cause was brought solely upon the common-law record, this Court should adhere to it and not read something into the record which is not found there.

On April 18, 1932, the trial was held in Case No. 25503, and the court-appointed Counsel appeared in plaintiff in error's behalf. Trial by jury was had and he was found guilty of Armed Robbery, though sentence was deferred until a later date.

On April 19, 1932, plaintiff in error's counsel could not appear as he was out of town, so he sent a telegram to the trial court, stating he could appear on that date. The trial court then appointed another counsel for plaintiff in [fol. 100] error in Case No. 25505. He was tried by a Jury and found guilty of Armed Robbery. Sentence was deferred until a later date.

Immediately thereafter, plaintiff in error was placed on trial in Case No. 25506, for the crime of Burglary. The same Counsel who appeared in Case No. 25505, sought leave of the court to withdraw, which was allowed. The trial court stated: "The Court is disinclined to appoint any member of the bar as defendant's Counsel to appear as Counsel in this case." Court then instructed Defendant that he would give him time to get counsel and defendant informed the Court that he had no funds to employ counsel, that they were tied up.

Surely, plaintiff in error did not have to place himself un-er oath again, in order to obtain Counsel. The trial court well knew plaintiff in error had no funds, for the court ordered all his money confiscated, and Did Appoint *Two Counsels,* Previously in His Behalf. The trial court forced plaintiff in error to stand trial without counsel, and plaintiff in error was found guilty of the crime of Burglary. He personally made an oral motion for a New Trial. Sentence was deferred until a later date.

Immediately after this trial, plaintiff in error was placed on trial in Case No. 25504. The same circumstances which prevailed in Case No. 25506 prevailed herein. He had no

Counsel and was forced to stand trial without counsel, and was found guilty of the crime of Burglary. He personally made an oral motion for a New Trial. Sentence was deferred to a later date.

[fol. 101] On April 22, 1932, plaintiff in error's *Original Counsel, Who Had Been Appointed By The Trial Court, Returned And Reentered The Case.* He motioned the court for a New Trial and in Arrest of Judgment, which were overruled. The court then imposed consecutive sentences.

Does this Court mean to imply that when a defendant has *four* separate trials as herein, that he must place himself under oath *in each case,* though counsel was appointed to appear for him in all cases? We find nothing in the statutes or previous rulings of this Court to such effect.

We made no complaint regarding the trial court not appointing Counsel for plaintiff in error before trial. But we did state that when the Second Counsel withdrew from the case, that the court should have appointed plaintiff in error still *another counsel*—or have continued the cases until his *Originally Appointed Counsel* returned from out of town. What prompted the trial court to rush the matter to trial? Why did the court deny appointing a *Third Counsel,* as long as it had already appointed *Two Counsels?*

The fact remains that the trial court not only appointed counsel for him in the first instance, but appointed a second counsel, when the first counsel was out of town and could not defend for plaintiff in error. The Court's theory as to the question of appointment of counsel is not borne out by the Record. Plaintiff in Error *did indeed comply with the statute.* There was no reason for him to state upon oath once more that he had no funds and could not employ counsel.

If this Court will adhere to the certified Record submitted [fol. 102] in this cause, it will have to admit that plaintiff in error must have placed himself squarely within the statute, else the trial court would not have appointed *Two Different Counsels.* Certainly the trial court knew the provisions of the statute, and did not act until plaintiff in error complied thereto. In the absence of a showing the true record prevails. Should this Court scan the records once more, it will see the fallacy of its ruling.

We now come to the matter of the entry of "consecutive sentences." Nowhere in our Brief do we question the right of a court to enter consecutive sentences. Our contention is,

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that the consecutive sentences were not entered in the manner in which this Court has held to be correct. While we are quite familiar with People v. Wooten, 392 Ill. 468, we did not base our contention on that case alone. In United States ex rel: Chasteen v. Denemark, No. 8364, Circuit Court of Appeals, 7th District, November 3, 1943, which reversed the *ol*wer court's ruling, it was held:

> "The judgment No. 1745996, was vague and indefinite in many respects. It contained only a number, mentioning no title or name of any court in which No. 1745995 was tried, nor the duration of any sentence imposed. Thus, tested by the standards enunciated in the cases cited, the phrase, "To be served consecutively with case No. 1745995," must be regarded as without effect. Nor can these defects be cured by the mittimus, which is only a transcript of the minutes of the conviction and sentence duly certified by the Clerk. The clerk can only certify to the order of the court, and the Bailiff of the Municipal Court can only execute the sentence of the court as recorded." People v. Graydon, 329 Ill. 398, 401, 160 N.N. 748.

All we find in the instant cause, is that the sentences are to run consecutive to a mere number. There is no mention of the title or name of any court in which the cases were [fol. 103] tried, nor the Duration Of Any Sentence Imposed. We cannot see how this Court can hold that such consecutively entered sentences can be held to be valid. The Court should hold that they can only be considered as running concurrently.

This Court states that because there is no Bill of Exceptions there is nothing in the common-law record showing that any challenge was interposed to the qualification of any juror either for cause or peremptorily. Again we state to the Court. We are confining ourselves to what the common-law record contains. No question is being raised herein that is solely within the confines of a Bill of Exceptions.

Can this Court honestly state that it is necessary for a challenge to be made to the juror's qualification in the matter of seven of those petit jurors serving in the four trials? Are such trials within the meaning of the "Due Process" clauses of the state and federal constitutions? Does this Court mean to say that because plaintiff in error did not

challenge the jurors that he cannot complain of such invalid and illegal trials? We believe that when a question of this sort is raised, and is proven by the Record, that this Court should take cognizance of it.

First of all we wish to again remind this Court that plaintiff in error was denied Counsel at the trials in Case Nos. 25506 and 25504. Is he presumed to know what to say and do? The duty of the trial court is to see that plaintiff in [fol. 104] error had a "Fair And Impartial Trial."

We have yet to read of a trial or trials that was conducted in the manner in which plaintiff in error was tried and convicted. Five jurors in the first trial served also in the third trial. One juror who served in the first trial served also in the second and third trials. One juror who served in the first trial also served in the fourth trial. Certainly, in view of such unorthodox proceedings, this Court cannot say that he was not denied "Due Process And Equal Protection Of The Law," inviolation of the State and Federal Constitutions. Is the constitutional mandate of a Fair And Impartial Trial to be overlooked, simply because plaintiff in error made no objection to such procedure?

Had the trial court protected plaintiff in error's rights and appointed Counsel for him, his rights certainly would have been protected. Or, if the trial court did not wish to appoint another Counsel, he either should have compelled the second Counsel to continue with the trials—or in the alternative, should have continued the cases until such time that his first appointed Counsel would return to the city.

Plaintiff in error contends that the trials had in these causes were not real trials, but mere shams, those of false pretense and fraud. Ex parte Sharp, 33 F. Supp. 464; Palko v. State of Connecticut, 1937, 58 Sup. Ct. 149; Mooney v. Holohan, Calif. 1935, 55 S. Ct. 340; Art. II/ Sec. 2, Illinois Constitution; and Fourteenth Amendment to the Constitution of the United States.

This Court admits in its Opinion, that: "The record in this case presents an unusual situation." However, it had not seen fit to Reverse, even though all pretense of a "Fair [fol. 105] And Impartial Trial" were cast aside. Such convictions cannot stand—they must not stand, if plaintiff in error is to receive the benefits and privileges provided by the state and federal constitutional provisions.

We trust that this Court will not condemn before it takes all the matters into consideration. After sifting the wheat from the chaff, it undoubtedly will come to the conclusion that it overlooked and misapprehended the full import of the facts alleged.

For the reasons set forth, it becomes necessary that this Court render a new Opinion, in which it should rule that plaintiff in error did not have a "Fair And Impartial Trial"; That he was twice put in jeopardy by his trial and convictions in Nos. 25504 and 25506; that he was denied the aid and assistance of Counsel at his two trials for Burglary; and that seven jurors serving in his four trials deprived him of his statutory and constitutional rights. The Court should Reverse Case Nos. 25506 and 25504, without remandment.

Respectfully submitted, Donald Loftus, Plaintiff in Error, Appearing Pro Se.

(M. ben Solomon) on Brief.

[fol. 106] IN SUPREME COURT OF ILLINOIS

ORDER DENYING REHEARING—January 20, 1947

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this case.

[fol. 107] [Clerk's Certificate to foregoing transcript omitted in printing.]

[fol. 108] SUPREME COURT OF THE UNITED STATES

No. 59, October Term, 1947

DONALD LOFTUS, Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS

ORDER GRANTING CERTIORARI—February 9, 1948

On petition for writ of Certiorari to the Supreme Court of the State of Illinois.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

(5120)